

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<p>Applicant: Lester F. LUDWIG</p> <p>Serial No.: 10/676,926</p> <p>Filed: September 30, 2003</p> <p>Title: DERIVATION OF CONTROL SIGNALS FROM REAL-TIME OVERTONE MEASUREMENTS</p> <p>Group Art Unit: 2837</p> <p>Examiner: Marlon T. Fletcher</p> <p>Confirmation No. 8187</p> <p>Attorney Docket No.: 92031/8727 [2152-3014]</p>	<p>Certificate of Transmission/Mailing</p> <p>I hereby certify that this correspondence is being facsimile transmitted to the USPTO, transmitted via the Office electronic filing system, or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below:</p> <table><tr><td><u>September 8, 2008</u></td><td><u>/Jeffrey J. Lotspeich/</u></td></tr><tr><td>Date</td><td>Jeffrey J. Lotspeich</td></tr><tr><td></td><td>Registration No. 45,737</td></tr><tr><td></td><td>Attorney for Applicant(s)</td></tr></table>	<u>September 8, 2008</u>	<u>/Jeffrey J. Lotspeich/</u>	Date	Jeffrey J. Lotspeich		Registration No. 45,737		Attorney for Applicant(s)
<u>September 8, 2008</u>	<u>/Jeffrey J. Lotspeich/</u>								
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**SUPPLEMENT TO APPEAL BRIEF**

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant submits this Supplement to the previously filed Appeal Brief. This Supplement reflects recent changes to the Related Appeals and Interferences portion of the Appeal Brief. All other portions of the Appeal Brief remain as previously submitted. Accordingly, Appellant submits the following:

## **II. RELATED APPEALS AND INTERFERENCES**

Currently, there are six other related appeals which have been filed. These appeals have been filed in the following applications:

<b>Docket No.</b>	<b>App. Ser. No.:</b>	<b>App. filing date:</b>	<b>Appeal filed:</b>
2152-3005	09/812,400	March 19, 2001	January 25, 2007
2152-3023	10/680,591	October 6, 2003	January 31, 2008
2152-3027	10/702,262	November 5, 2003	January 29, 2007* & March 12, 2008
2152-3026	10/703,023	November 5, 2003	July 25, 2006
2152-3030	10/702,415	November 6, 2003	August 8, 2008
2152-3044	11/040,163	January 21, 2005	January 31, 2008

With regard to Ser. No. 10/702,262 (Atty. Doc. No. 2152-3027), the Examiner has recently reopened prosecution by issuing an Office Action on December 10, 2007. On review of this Office Action, it is believed that the Examiner has improperly reopened prosecution as being in violation of the requirements of MPEP § 1207.04 since, *inter alia*, the Examiner failed to obtain the necessary approval from his supervisory patent examiner.<sup>1</sup> Notwithstanding the improper reopening of prosecution in that case, since the Examiner has, in all relevant parts, simply reformulated the same rejections, Appellant has filed a second Notice of Appeal in the '262 application on March 12, 2008.

Appellant notes further that there are approximately five additional pending applications containing substantially the same disclosure as the above-identified applications, and which are assigned to the same Examiner as the present application and the above-mentioned applications. Based upon conversations with the Examiner and his SPE Lincoln Donovan, Appellant anticipates that each of the five pending applications, which if rejected, will also require an appeal to the Board of Appeals and Interferences. Appellant will endeavor to update this section of the present Appeal Brief when necessary to reflect the current status of such related appeals.

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<sup>1</sup> The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. MPEP 1207.04

**CONCLUSION**

Appellant respectfully requests that the forgoing Section II be used to replace the Section II of the previously submitted Appeal Brief.

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Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

/Jeffrey J. Lotspeich/

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Date: September 8, 2008